

Appl. No. 10/790,844
Amdt. dated November 29, 2006
Reply to Office action of August 29, 2006

AMENDMENTS TO THE DRAWINGS:

The two attached sheets of drawings include changes to Figs. 1 and 2 and replace the original sheets including Figs. 1 and 2 and the replacement sheets including Figs. 1 and 2 filed on January 20, 2006. In Figs. 1 and 2, the arrow pointing from reference numeral 6 has been extended to touch the fluid feeding device.

Attachment: Replacement Sheets

Annotated Sheets Showing Changes

Appl. No. 10/790,844
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REMARKS

Claims 1, 2, 4-11 and 13-20 are presently in the application. Claims 3 and 12 have been canceled.

Both Figs. 1 and 2 have been amended to show the arrow pointing from reference numeral 6 touching the fluid feeding device, as suggested by the examiner.

Independent claims 1 and 10 have been rejected under 35 U.S.C. 102(e) as anticipated by Sawert et al (US 6,951,131), using the filing date of Provisional Application 60/408,626 as the effective date of the reference. Reconsideration of the rejection is requested.

Claims 1 and 10 have been amended to include the language of claims 3 and 12, respectively, and now require a sound guide conduit comprising a horizontal or oblique forward-flow region disposed near the container bottom.

The Sawert patent (US 6,951,131) shows, in Fig. 4, a tube-like member (unnumbered) extending from the left-hand portion of the tank to the bottom of the fuel reservoir 22 on the right-hand portion of the tank. The examiner reads the claimed sound guide conduit comprising a horizontal or oblique forward-flow region disposed near the fuel tank bottom on the unnumbered tube-like member shown in Fig. 4.

The unnumbered tube-like member in Fig. 4 of the Sawert patent is not described as a sound guide conduit and is, in fact, a part of the suction jet pump which pumps fuel from one side of the caliper tank to the other using the fuel delivery module. The suction jet pump is driven by the feed pump in the fuel delivery module. The line in question; therefore, has nothing to do

with measuring the fill level. The sound guiding tube taught by Sawert is the tube 10 in Fig. 1 which extends vertically and has no flow region as recited in claims 1 and 10. Sawert teaches that measurement accuracy can be improved by the use of a first ultrasonic sensor 36 on the lower end and a second ultrasonic sensor 38 on the upper end of the sound guiding tube 10. The signals of the two sensors 36, 38 are evaluated in a control unit (col. 5, ll. 45-48). As a result, one skilled in the art would have been led away from applicants' invention, including a horizontal or oblique flow region, by Sawert's teaching of two ultrasonic sensors at opposite ends of a vertical sound guiding tube.

To support a rejection of a claim under 35 U.S.C. 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Sawert does not teach a device for measuring the level of a fluid in a container of the type recited in claim 1 or claim 10 in which the sound guide conduit comprises a horizontal or oblique forward-flow region disposed near the fuel tank bottom. Accordingly, claims 1 and 10 and the claims dependent thereon are not anticipated by Sawert.

Also, the tube-like member in Fig. 4 of the Sawert patent is not shown or described in the provisional application. Compare Fig. 4 of the Sawert patent with Fig. 5 of the provisional application. Therefore, the effective date of the tube-like member of the Sawert patent is the non-provisional application filing date, that is, September 4, 2003, which is after applicants' priority

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date. To establish applicants' entitlement to the benefits of the March 19, 2003 filing date of their German priority application, the present amendment is accompanied by an English-language translation of the certified copy of the German priority document. Therefore, even if the Sawert patent does teach or suggest a sound guide conduit which comprises a horizontal or oblique forward-flow region disposed near the fuel tank bottom, which it does not, the teaching is not prior art to the applicants.

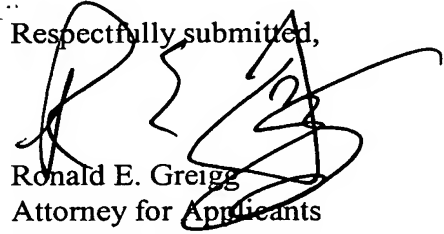
To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). None of Sawert et al, Cummings, and Shuler et al teach or suggest a device for measuring the level of a fluid in a container of the type recited in claims 1, 2, 4-11 and 13-20 in which the sound guide conduit comprises a horizontal or oblique forward-flow region disposed near the fuel tank bottom. Accordingly, claims 1, 2, 4-11 and 13-20 are not rendered obvious by the combined teachings of Sawert et al, Cummings, and Shuler et al.

The Commissioner is hereby authorized to charge any/all fees associated with this communication to Deposit Account 07-2100.

Appl. No. 10/790,844
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Entry of the amendment and allowance of the claims are respectfully requested.

Respectfully submitted,



Ronald E. Greigg
Attorney for Applicants
Registration No. 31,517
CUSTOMER NO. 02119

GREIGG & GREIGG, P.L.L.C.
1423 Powhatan Street, Suite One
Alexandria, VA 22314
Tel. (703) 838-5500
Fax. (703) 838-5554

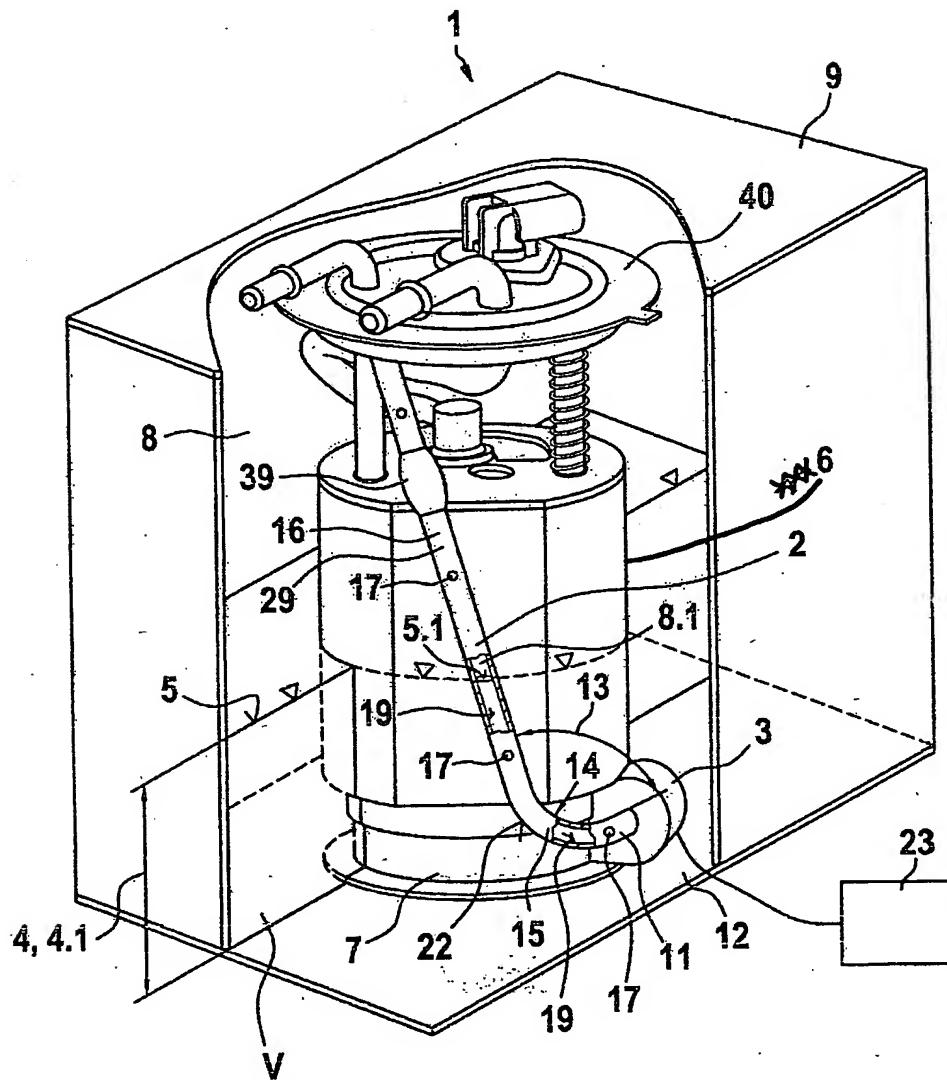
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Enclosures: Translation of German Application No. 10312101.3
Translator's Declaration

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Annotated Sheet Showing Changes

Fig. 1



Annotated Sheet Showing Changes

Fig. 2

